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ANALYSIS OF CONSTITUTIONAL PROVISIONS  
AFFECTING PUBLIC WELFARE IN THE STATE OF  
DELAWARE

JUNE 1, 1937

AUG 7 '37

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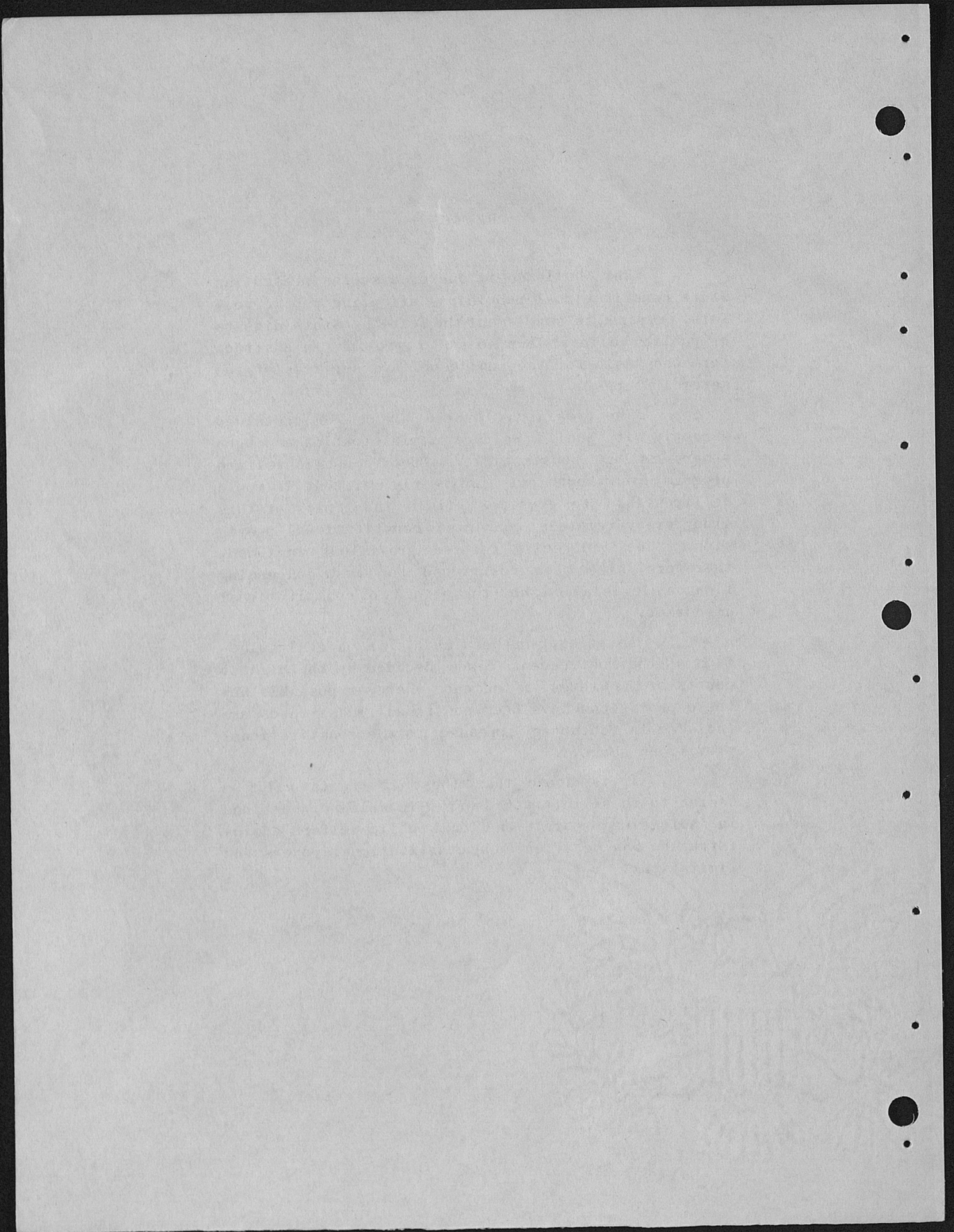
## PREFACE

This bulletin is one of a series presenting State constitutional provisions affecting public welfare, prepared to supplement the State by State digests of public welfare laws so as to provide in abstract form the basis for the public welfare services of the several States.

The provisions quoted are those concerned directly with public welfare administration and such others as may substantially affect a public welfare program, even though only indirectly related. It would be impossible to consider within the limits of this study every remotely connected constitutional provision. The indirectly related provisions included, therefore, have been restricted to those concerning finance, legislation, and the methods of constitutional amendment.

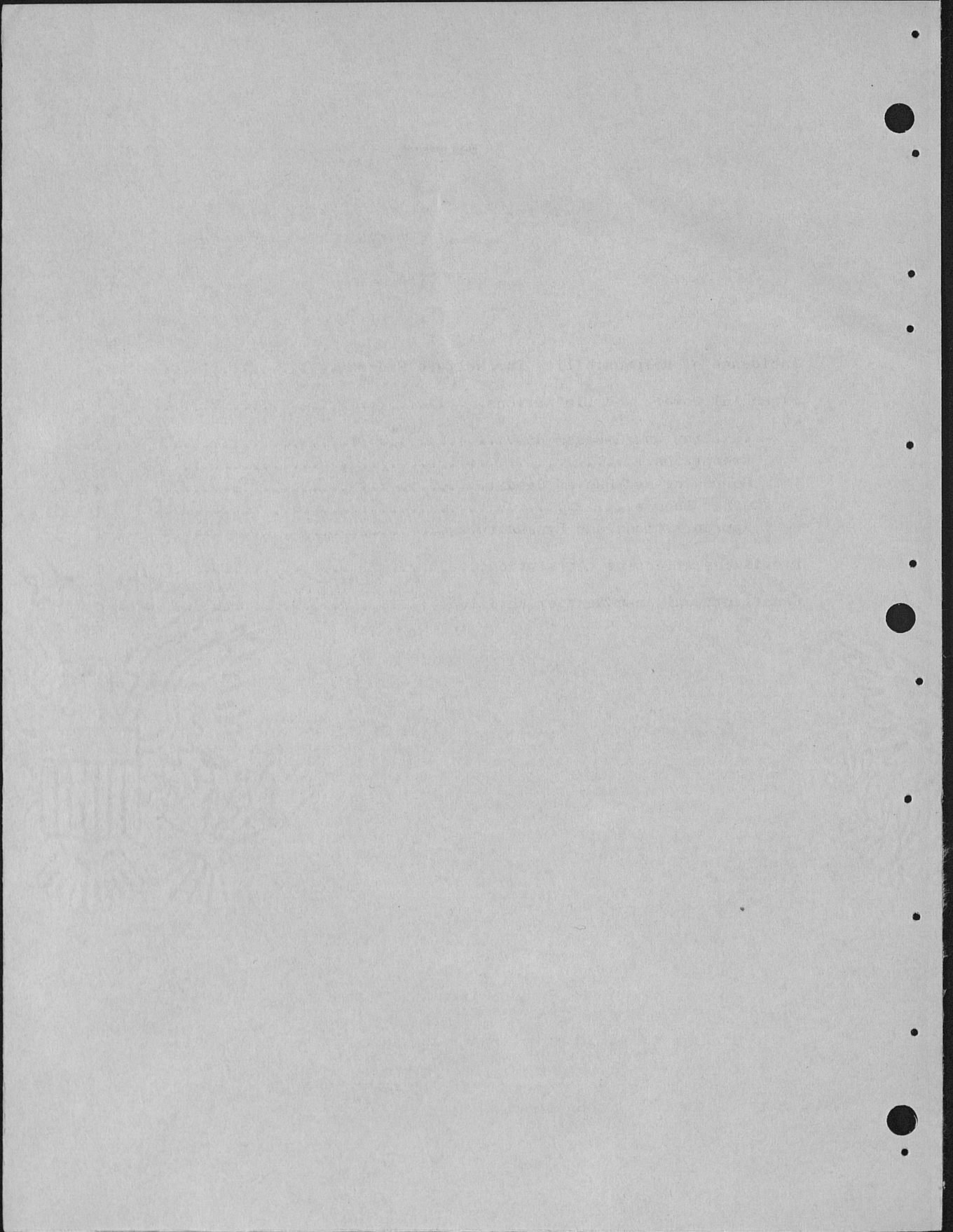
An attempt has been made, by a careful selection of the most recent cases decided by the highest courts of the States, to indicate wherever possible how these provisions have been construed. These cases are included in footnotes appended to the constitutional provisions shown.

It is hoped that these abstracts will be useful to those interested in public welfare questions in indicating how State and local public welfare administration may be affected by constitutional powers and limitations.



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Delaware

ANALYSIS OF CONSTITUTIONAL PROVISIONS AFFECTING  
PUBLIC WELFARE IN DELAWARE<sup>1</sup>

I. Incidence of Responsibility for Welfare Program

The General Assembly shall provide for the establishment and maintenance of a State Board of Health, which shall have supervision of all matters relating to public health, with such powers and duties as may be prescribed by law;<sup>2</sup> \* \* \*.

II. Financial Powers and Limitations

A. Taxation and Assessments

(1) State

(a) All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, but the General Assembly may by general laws exempt from taxation such property as in the opinion of the General Assembly will best promote the public welfare.<sup>3</sup>

(b) In all assessments of the value of real estate for taxation, the value of the land and the value of the buildings and

<sup>1</sup>Constitution (1897), as published in the Revised Code of Delaware (1935), by authority of the General Assembly; with all amendments to June 1, 1937.

Where the Constitution did not provide for the calling of special elections in certain specific cases, the Legislature was held to have the authority to so provide. The opinion stated that "In creating a legislative department, and conferring upon it the legislative power, the people must be understood to have conferred the full and complete power \* \* \*, subject to such restrictions as they may have seen fit to impose, and to the limitations which are contained in the Constitution of the United States." State vs. Fountain, 6 Pennewill's Del. Report 520, 69 A. 926 (1908).

In a case involving motor vehicle regulation the Supreme Court stated that the police power of a State "is incapable of that precise definition which may absolutely indicate its limits, but it may be said to be the power inherent in the government to enact laws, within constitutional limits, to promote the order, safety, health, morals and general welfare of society. \* \* \* It is a plenary power in the State coextensive with self protection, and is as broad as the public welfare." Bispham vs. Mahony, 175 A. 320 (1934).

<sup>2</sup>Constitution, Art. XII, Sec. 1.

<sup>3</sup>Constitution, Art. VIII, Sec. 1.

A tax of 1 percent levied on all taxable income was held valid under this section. The court in its opinion stated that the Legislature was not restricted as to the subjects which it might select for taxation. Provisions exempting salaries of State officers, rentals of real property, and incomes of less than \$1,000 were held not to violate the uniformity requirement of this section. The court stated that such exemptions were a matter of legislative discretion, which would not be disturbed unless they appeared to be unreasonable and arbitrary. State vs. Pinder, 7 Boyce 416, 108 A. 43 (1919).

## II. Financial Powers and Limitations—Continued

## A. Taxation and Assessments—Continued

## (1) State—Continued

improvements thereon shall be included. And in all assessments of the rental value of real estate for taxation, the rental value of the land and the rental value of the buildings and the improvements thereon shall be included. The foregoing provisions of this section shall apply to all assessments of the value of real estate or of the rental value thereof for taxation for State, county, hundred, school, municipal or other public purposes.<sup>4</sup>

(c) The General Assembly shall provide for levying and collecting a capitation tax from every citizen of the State of the age of twenty-one years or upwards; but such tax to be collected in any County shall be uniform throughout that County, and such capitation tax shall be used exclusively in the County in which it is collected.<sup>5</sup>

## (2) Counties and Other Local Units

No provision.<sup>6</sup>

## B. Exemptions

(1) \* \* \* the General Assembly may by general laws exempt from taxation such property as in the opinion of the General Assembly will best promote the public welfare.<sup>7</sup>

<sup>4</sup>Constitution, Art. VIII, Sec. 7.

<sup>5</sup>Constitution, Art. VIII, Sec. 5.

A capitation tax for school purposes used within a school district but assessed by the county was held not to violate the uniformity requirement of this section or Art. VIII, Sec. 1 (see p. 1, par. (a)) where it was uniform throughout the school district, even though it was not uniform throughout the county. In re School Code of 1919, 7 Boyce 406, 108 A. 39 (1919).

<sup>6</sup>Municipal corporations were held to be legal creations of the Legislature, possessing only those powers expressly conferred or necessarily implied as essential to carry out the purposes of their creation. Boyer vs. Delaware Liquor Commission, 173 A. 522 (1934).

<sup>7</sup>Constitution, Art. VIII, Sec. 1.

In holding that a cemetery was exempt from special assessments as well as from ordinary taxation the court stated: "Statutory exemptions from taxation are strictly construed and any doubt is resolved in favor of the public and against the claimed exemption." Mayor and Council of Wilmington vs. Riverview Cemetery Company of Wilmington, 190 A. 111 (1937).

A statute exempted from taxation the property of any church "not held by way of investment." Property owned by a church and used as a school where tuition was charged was held exempt from taxation as not being "held by way of investment" since no income was derived from the property. Mayor and Council of Wilmington vs. Wilmington Monthly Meeting of Friends, West Street, 133 A. 88 (1926).

A statute exempted from taxation property "belonging to any corporation for charitable uses." Property vested in a corporation for the support of public schools, for municipal improvements, and for gifts to needy persons of a town was held exempt from taxation under the statute. Trustees of New Castle Common vs. Megginson, 1 Boyce 361, 77 A. 565 (1910).

See p. 1, footnote 3.



## II. Financial Powers and Limitations—Continued

## B. Exemptions—Continued

(2) \* \* \* all real or personal property used for school purposes, where the tuition is free, shall be exempt from taxation and assessment for public purposes.<sup>8</sup>

(3) Shares of the capital stock of corporations created under the laws of this State, when owned by persons or corporations without this State, shall not be subject to taxation by any law now existing or hereafter to be made.<sup>9</sup>

## C. Borrowing and Use of Credit

## (1) State

(a) No money shall be borrowed or debt created by or on behalf of the State but pursuant to an Act of the General Assembly, passed with the concurrence of three-fourths of all the members elected to each House, except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war, or pay existing debts; and any law authorizing the borrowing of money by or on behalf of the State shall specify the purpose for which the money is to be borrowed, and the money so borrowed shall be used exclusively for such purpose; but should the money so borrowed or any part thereof be left after the abandonment of such purpose or the accomplishment thereof, such money, or the surplus thereof, may be disposed of according to law.<sup>10</sup>

(b) No appropriation of the public money shall be made to, nor the bonds of this State be issued or loaned to any county, municipality or corporation, nor shall the credit of the State, by the guarantee or the endorsement of the bonds of other undertakings of any county, municipality or corporation, be pledged otherwise than pursuant to an act of the General Assembly, passed with the concurrence of three-fourths of all the members elected to each House.<sup>11</sup>

(2) Counties and Other Local Units<sup>12</sup>

No county, city, town or other municipality shall lend its credit or appropriate money to, or assume the debt of, or become a

<sup>8</sup>Constitution, Art. X, Sec. 3.

<sup>9</sup>Constitution, Art. IX, Sec. 6.

<sup>10</sup>Constitution, Art. VIII, Sec. 3.

<sup>11</sup>Constitution, Art. VIII, Sec. 4.

See p. 2, footnote 6.

<sup>12</sup>A charter provision limited the indebtedness of the town of Middletown to 10 percent of the assessed value of all real estate in the town. The town entered into an agreement to lease pumping and lighting equipment for 1 year with the option to buy the equipment or extend the lease at the end of the first, second, or third year at specified sums. The amount due in rent for the first year was less than the debt limitation allowed, but the amount payable under the options was in excess of the

## II. Financial Powers and Limitations—Continued

### C. Borrowing and Use of Credit—Continued

#### (2) Counties and Other Local Units—Continued

shareholder or joint owner in or with any private corporation or any person or company whatever.<sup>13</sup>

### D. Other Income

No part of the principal or income of the Public School Fund, now or hereafter existing, shall be used for any other purpose than the support of free public schools.<sup>14</sup>

### E. Appropriations and Expenditures

(1) No money shall be drawn from the treasury but pursuant to an appropriation made by Act of the General Assembly; provided, however, that the compensation of the members of the General Assembly and all expenses connected with the session thereof may be paid out of the treasury pursuant to resolution in that behalf; a regular account of the receipts and expenditures of all public money shall be published annually.<sup>15</sup>

(2) No portion of any fund now existing, or which may hereafter be appropriated, or raised by tax, for educational purposes, shall be appropriated to, or used by, or in aid of any sectarian, church or denominational school;<sup>16</sup> \* \* \*.

## III. Provisions Affecting Legislation

### A. Regular Sessions of Legislature

The General Assembly shall meet on the first Tuesday of January, biennially, and at such other times as the Governor shall convene the same.<sup>17</sup>

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debt limitation. The court held that the amount payable under the options was not a "debt" within the meaning of the limitation because the city was not bound to pay and where there was no obligation there was no "debt." *Corhran vs. Mayor and Council of Middletown*, 125 A. 459 (1924).

<sup>13</sup>Constitution, Art. VIII, Sec. 8.

<sup>14</sup>Constitution, Art. X, Sec. 4.

<sup>15</sup>Constitution, Art. VIII, Sec. 6.

In a case holding a payment by a city to a private corporation invalid the court stated: "\* \* \* since the power of the state to raise money by taxation is restricted to such uses as are for the public good, it naturally follows that money raised by this means cannot be expended except for the benefit of the public, and that appropriations of public funds can only be made for those purposes which are for the public use." *State ex rel. Volunteer Firemen's Relief Association of Wilmington vs. Mayor and Council of Wilmington*, 134 A. 694 (1926).

<sup>16</sup>Constitution, Art. X, Sec. 3.

<sup>17</sup>Constitution, Art. II, Sec. 4.

Art. V, Sec. 1 of the Constitution provides that the general election shall be held biennially on the Tuesday next after the first Monday in the month of November.

## III. Provisions Affecting Legislation—Continued

## B. Special Sessions of Legislature

He (the Governor) may on extraordinary occasions convene the General Assembly by proclamation;<sup>18</sup> \* \* \*.

## C. Powers of Initiative and Referendum

No provision.

## D. Legislative Enactment

(1) No bill or joint resolution, except bills appropriating money for public purposes, shall embrace more than one subject, which shall be expressed in its title.<sup>19</sup>

(2) All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose alterations as on other bills; and no bill from the operation of which, when passed into a law, revenue may incidentally arise shall be accounted a bill for raising revenue; nor shall any matter or cause whatever not immediately relating to and necessary for raising revenue be in any manner blended with or annexed to a bill for raising revenue.<sup>20</sup>

(3) Every bill which shall have passed both Houses of the General Assembly shall, before it becomes a law, be presented to the Governor; if he approve, he shall sign it; but if he shall not approve, he shall return it with his objections to the House in which it shall have originated, which House shall \* \* \* proceed to reconsider it. If, after such reconsideration, three-fifths of all the members elected to that House shall agree to pass the bill, it shall be sent together with the objections to the other House, by which it shall likewise be reconsidered, and if approved by three-fifths of all the members elected to that House, it shall become a law; \* \* \*. If any bill shall not be returned by the Governor within ten days, Sundays excepted, after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly shall, by adjournment, prevent its return, in which case it shall not become a law without the approval of the Governor. No bill shall become a law after the final adjournment of the General Assembly, unless approved by the Governor within thirty days after such adjournment. The Governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items,<sup>21</sup> \* \* \*.

<sup>18</sup>Constitution, Art. III, Sec. 16.

<sup>19</sup>Constitution, Art. II, Sec. 16

<sup>20</sup>Constitution, Art. VIII, Sec. 2.

<sup>21</sup>Constitution, Art. III, Sec. 18.

## IV. Constitutional Amendment or Revision

## A. By Proposal of Legislature or People.

Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives; and if the same shall be agreed to by two-thirds of all the members elected to each House, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and the Secretary of State shall cause such proposed amendment or amendments to be published three months before the next general election in at least three newspapers in each county in which such newspapers shall be published; and if in the General Assembly next after the said election such proposed amendment or amendments shall upon a yea and nay vote be agreed to by two-thirds of all the members elected to each House, the same shall thereupon become part of the Constitution.<sup>22</sup>

## B. By Constitutional Convention

The General Assembly by a two-thirds vote of all the members elected to each House may from time to time provide for the submission to the qualified electors of the State at the general election next thereafter the question, "Shall there be a Convention to revise the Constitution and amend the same?"; and upon such submission, if a majority of those voting on said question shall decide in favor of a Convention for such purpose, the General Assembly at its next session shall provide for the election of delegates to such convention at the next general election.<sup>23</sup> \* \* \*

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<sup>22</sup>Constitution, Art. XVI, Sec. 1.

<sup>23</sup>Constitution, Art. XVI, Sec. 2.

